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March 10, 2008

VIA HAND DELIVERY & ELECTRONIC FILING

Honorable Joseph J. Farnan, Jr., U.S.D.J.
J. Caleb Boggs Federal Bldg.
844 N. King St.
Room 4124
Lockbox 27
Wilmington, DE 19801

Re: L.J. Zucca, Inc. v. Allen Bros. Wholesale Distributors Inc., et al.
Civil Action No. 1:07-CV-00002 (JJF-MPT)

Dear Judge Farnan:

We represent Defendant Cooper-Booth Wholesale Company ("Cooper-Booth") in the above-referenced matter. On January 23, 2007, Cooper-Booth filed a motion under Rule 12(c) for partial judgment on the pleadings (Docket Entry No. 12), which has been fully briefed and is currently pending before Your Honor.

In that motion, Cooper-Booth argues that plaintiff's claims under the Delaware Unfair Cigarette Sales Act ("UCSA"), 6 *Del. C.* §§ 2601 – 2608, are preempted by Section 1 of the Sherman Act, 15 U.S.C. § 1. Cooper-Booth's motion challenges the UCSA as being a form of minimum resale price maintenance; a *vertical restraint* that the United States Supreme Court has traditionally condemned as being a *per se* violation of the Sherman Act. But after the parties fully briefed the motion, the Supreme Court released its decision in *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 127 S.Ct. 2705 (2007), and held that minimum resale price maintenance would no longer be considered a *per se* violation of the Sherman Act.

Upon further research after the Supreme Court's decision in *Leegin*, Cooper-Booth has determined that its Sherman Act preemption argument remains valid on the premise that the UCSA is a *horizontal* price restraint, which, even after the decision in *Leegin*, is a *per se* violation of the Sherman Act.

What we propose, therefore, is to withdraw our original motion for partial judgment on the pleadings, which was filed pre-*Leegin*, and file in its place a revised motion for partial judgment on the pleadings. We intend to do this Wednesday, March 12, 2008.

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If Your Honor disagrees with our proposed course of action, please let us know and we will act accordingly. Thank you.

Respectfully submitted,

Christine S. Azar
DE I.D. No. 4170

CSA:ka/pfc

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